Supreme Court, U.S.
FILED

No. 091073 DEC 22 2009

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Tammy J. Shaw---Petitioner

vs

Lynchburg Department of Social Services, et al---
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Tammy J. Shaw
Post Office Box 1162
Forest, Virginia 24551
Telephone (434) 382-9403

QUESTIONS PRESENTED

1. The U. S. Court of Appeals affirmed the judgment of the District Court in a decision made on a federal question in relation to the Rooker-Feldman Doctrine that conflicts with a relevant decision of the U.S. Supreme Court.
2. The U.S. Court of Appeals affirmed the decision of the District Court not to allow the non-lawyer parent, petitioner, to litigate pro se in a federal court action on behalf of a child, an important federal question that has not been, but is requested to be, settled by the U.S. Supreme Court.
3. The U.S. Supreme Court has not ruled on the Constitution proclaiming safeguards positive as well as negative in protection of rights and liberties of its citizens. A ruling regarding "in-actions" triggering the Due Process Clause in the same manner as "actions" could assure equal protection of the law.

LIST OF PARTIES

Honorable Tim Kaine
Patrick Henry Building 3 rd Floor
1111 East Broad
Richmond, Virginia 23219

Honorable Bob McDonnell
Attorney General
900 East Main Street
Richmond, Virginia 23219

Mark Johnson
99 Ninth Street
Lynchburg, Virginia 24504

Lisa Parks
99 Ninth Street
Lynchburg, Virginia 24504

Sally Barca
99 Ninth Street
Lynchburg, Virginia 24504

Eleanor Dunn
900 Church Street
Lynchburg, Virginia 24504

Robert Moore
805 Court Street
Lynchburg, Virginia 24504

Dr A. J. Anderson
2316 Atherholt Road Suite 212
Lynchburg, Virginia 24501

TABLE OF CONTENTS

Page

OPINIONS BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....1-3

STATEMENT OF CASE.....4-6

REASONS FOR GRANTING THE WRIT.....7

CONCLUSION 8

TABLE OF CITED AUTHORITIES

Virginia Code 16.1-253.....5

Virginia Code 63.2-1503.....5

INDEX TO APPENDICE

APPENDIX A---Judgment of United States Court of Appeals

APPENDIX B --Order of United States District Court and Memorandum of Opinion

APPENDIX C---Petitioner's Informal Brief to U. S. Court of Appeals

IN THE SUPREME COURT OF
THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears as Appendix A to the petition and is unpublished. The opinion of the United States District Court appears as Appendix B.

JURISDICTION

The date in which the United States Court of Appeals decided my case was September 22, 2009. No petitions for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). An extension of time to file the petition for a writ of certiorari was granted to and including March 1, 2010 on December 31, 2009.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Law 92-4382, 92XXXVII, 92XXXVII(G), 92XXVII(G)18, 92k4382k "The concept of familial privacy protected by the due process clause is limited to two areas (1) thwarting

governmental attempts to interfere with particularly intimate family decisions, and (2) voiding government action that sever, alter, or otherwise affect the parent/child relationship." U.S.C.A. Const. Amend. 14

Civil Rights 78-1325, 78, 78III, 78k1323, 78k1325k "Section 1983's "color of state law" requirement excludes from the reach of 1983 all merely private conduct, no matter how discriminatory or wrongful but includes within its scope apparently private actions which has a sufficiently close nexus with the state to be fairly treated as that of the state itself." 42 U.S.C.A. 1983

Civil Rights 78-1018, 78, 781, 78k1016, 78k1018k "To establish Rehabilitation Act Claim, a plaintiff must prove that she was discriminated against due to discrimination solely on the basis of the disability. Rehabilitation Act of 1973 504 (a) 29 U.S.C.A. 794 (a)

Civil Rights 78-1354, 78, 78III, 78k1353, 78k1354k "The requirements for holding a municipality liable under 1983 for unconstitutional acts by a municipal employee below the policy making level apply not only in actions against local governments, but also in actions against individually named municipal agents, sued in their official capacities." 42 U.S.C.A. 1983

Malicious Prosecution 249-14, 249I, 249k14k "Under Virginia Law, in malicious prosecutions stemming from civil proceedings, a plaintiff must allege and prove arrest of his person, seizure of his property, or some special injury."

Conspiracy 91-7.5(1), 911(A), 91k 7.5, 91k.5 (1) k "For a claim to be stated for conspiracy to interfere with civil right through depriving persons of rights or privileges, there must be some racial, or perhaps otherwise class-based invidiously animus behind the alleged conspirators' action." 42 U.S.C.A. 1985 (3)

Civil Rights 78-1355, 78, 78III, 781353, 78k1355k: "Supervisory liability under 1983 is ultimately determined by pinpointing the persons in the decision-making chain whose deliberate indifference permitted the constitutional abuses to continue unchecked." 42 .U.S.C.A. 1983

Civil Rights 78-1397, 78, 78III, 78k1392, 78k1397k: "A 1983 plaintiff seeking to hold a municipality liable for unconstitutional acts by a municipal employee below the policymaking level must adequately plead and ultimately prove three elements: (1) the existence of an official policy or custom (2) that is fairly attributable to the municipality (3) that proximately caused the underlying constitutional violation. 12. U.S.C.A. 1983

Civil Rights 78-1352 (1), 78, 78III,78k1342, 78k1352 (1)k: " Failure to train municipal employees is a valid theory to establish municipal liability under 1983." 42 U.S.C.A. 1983

Negligence 272-273, 272, 272V, 272V, 272k273k: "Under Virginia law, 'gross negligence' is negligence which shocks fair-minded people, but is less than willful recklessness."

Health 198H-611, 198H, 198HV, 198HV (B), 198 Hk611k: To prevail in an action for professional

malpractice under the Virginia Medical Malpractice Act a plaintiff must (1) establish the standard of care; (2) demonstrate that the defendant's actions breached the standard of care; and prove that the defendant's breach was the proximate cause of the plaintiff's injuries." West V.C.A. 8.01-581.1

Virginia Codes: 63.2-1503, 63.2-1506, 63.2-1520, 63.2-1505, 16.1-266(G), 63.2-1509(A)(D), 63.2-1502(6)(12)(13), 51.5-40 and 54.1-3909

Virginia Administrative Codes: 22VAC40-705-80(b)(1), 22VAC40-7050-120(d), 22VAC40-705-150(a), 22VAC40-705-140(D)

STATEMENT OF CASE

The original complaint filed July 28, 2008 and the Amended Complaint filed November 24, 2008 contain claim(s) based on an act against petitioner's constitutional rights under 42 U.S.C.1983 by respondent(s) with claim stated in Complaint.

The petitioner's complaint does not seek recourse of any state court decision, nor does it contain a constitutional issue that could have been reviewed on direct appeal by the state appellate courts. Following the dismissal of a case that the respondents, as plaintiffs, fraudulently began, ex parte, August, 2006, and having not the statutory right to do so,

(Virginia Code 16.1-253), the respondent(s), as plaintiffs, did not appeal the dismissal, rendering the constitutional issues unaddressed. The dismissal by the lower court and absence of appeal by the respondent(s), as plaintiffs, avoided this petitioner , as a defendant, the opportunity to raise constitutional issues. The constitutional issues brought before the District Court do not require a judgment or review of any state court decision, therefore, this Complaint should not be barred from consideration under the Rooker-Feldman Doctrine.

Petitioner believes the facts presented in Informal Brief (Appendix C-Issue 1) will aid the Court in making a determination to this federal question presented.

Petitioner alleges other constitutional violations throughout the Complaint. Count 24 alleges constitutional right violation under 1983, Fourteenth Amendment, Section 1 with procedural component of our Constitution phrased as limitation on State's power to act, with intrusion by respondent(s) as arbitrary abuses of power, employing it as an instrument of oppression, intruding into parent-child relationship.

The specifics throughout the Complaint, count-by-count, reveal acts alleged as conspiracy against rights, argued to the U.S. Court of Appeals in Informal Brief (Appendix C-Issue 4).

Respondent(s) failed to report abuse allegations to the Commonwealth Attorney, as required by Virginia Code 63.2-1503(D), an "inaction" that

denied access to the courts, one such inaction raising the federal question of "inactions" presented.

The constitutional issues are of such nature that more than one jurisdictional claim under 1983 lies within Complaint. A constitutional claim under 1983 on behalf of petitioner is contained within state tort claim of malicious prosecution, with specifics in Count 14 that meet the requirements of Rule 12(b)(6). The Constitution, under due process, forbids government actions that sever, alter of otherwise affect the parent/child relationship. The U.S. Constitution allows states the power to govern themselves, however, where violations of the Constitution are present, as in this case, Constitutional law trumps state law.

Upon proof of false statements in affidavit, stated within the Amended Complaint, Count 14, the procedural due process rights of the children are violated.

Respondent(s) submitted false statements in affidavit, August 2006, to resume visitation knowing, by participation, that the court ceased such visitation with the father by issuance of a protective order, June 15, 2006, against same. This is a direct conflict of facts stated by the District Court in Memorandum Opinion Page 4, Footnote 3, argued in Informal Brief to U.S. Court of Appeals.

Petitioner believes that unique circumstances exist and are within the Complaint, worthy of broadening the general rule of pro se on behalf of a child, creating cause of federal question.

Infants 211 - 17, 211 k 17k. "Alleged actions of county child protective services caseworker of submitting knowingly false statements in her affidavit in support of child's emergency removal to court, if proven, violated child's procedural due process rights." USCA Const Amend 14.

Although the alleged constitutional violations of the children are intertwined with those of petitioner, a 1983 claim remains on behalf of petitioner to be considered, if pro se on behalf of children is not permitted.

REASONS TO GRANT

The dismissal by the District Court, affirmed by the U.S. Court of Appeals, was due to the alleged improper use of the Rooker-Feldman Doctrine, with the District Court further referencing the Doctrine as jurisdictional. The dismissal also relied upon the making of a decision based on a federal question of which the U.S. Supreme Court has not yet ruled. Both reasons were argued to the U.S. Court of Appeals.

With the use of the Rooker-Feldman and the dismissal that followed, the District Court declined to exercise its supplemental jurisdiction over state law claims, causing the alleged constitutional violations within to remain unheard by any court, further preventing the existing unique circumstances, argued by petitioner for pro se filing on behalf of a child, from being considered.

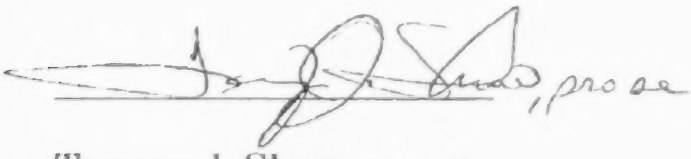
Beyond the federal question of pro se on behalf of a child, there remains constitutional claim under 42 U.S.C. 1983, Fourteenth Amendment, Section 1 for this petitioner. The Amended Complaint contains specifics of the actions and inactions by the respondents that are alleged as wholly arbitrary and irrational, providing a clear example of the oppression existing in our land, creating a need for federal interest.

Wherefore, this petitioner prays that the unconstitutional and criminal acts and the misuse of the power and authority entrusted by the courts and the people be heard.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Tammy J. Shaw, pro se

Date: March 1, 2010

FILED: September 22, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1210
(6:08-cv-00022-nkm-mfu)

Tammy J. Shaw, KGS, minor by her next friend; CAS, minor by her next friend; CJS, minor by her next friend.

Plaintiffs-Appellants

v

Lynchburg Department of Social Services; Bob McDonnell, State Attorney General; Eleanor Dunn, Deputy City Attorney; Tim Kaine; Sally Barca: Lisa Parks; Dr. A. J. Anderson, Investigator Robert W. Moore.

Defendants—Appellees

JUDGMENT

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ Patricia S. Connor, Clerk

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1210

Tammy J. Shaw; KGS, minor by her next friend; CAS, minor by her next friend; CJS, minor by her next friend.

Plaintiffs-Appellants

v.

Lynchburg Department of Social Services; Bob McDonnell, State Attorney General; Eleanor Dunn, Deputy City Attorney; Tim Kaine; Sally Barca; Lisa Parks; Dr. A.J. Anderson; Investigator Robert W. Moore.

Defendants—Appellees

Appeal from the United States District Court for the Western District of Virginia, at Lynchburg. Norman K. Moon, District Judge. (6:08-cv-00022-nkm-mfu)

Submitted: September 15, 2009 Decided: September 22, 2009

Before GREGORY and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Tammy J. Shaw, Appellant Pro Se. Alexander W. Bell, Bell & Schneider, PLC, Lynchburg, Virginia; Paul Kugelman, Jr., OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia; Nora Beth Dorsey, Daniel M. Kincheloe, Jodi Beth Simopoulos, HANCOCK, DANIEL, JOHNSON & NAGEL, PC. Glen Allen Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tammy J. Shaw appeals the district court's order denying relief on her 42 U.S.C. 1983 (2006) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the

reasons stated by the district court. Shaw v. Lynchburg Dep't of Soc. Servs.. No. 6:08-cv-00022-nkm-mfu (W.D. Va, Jan. 29, 2009). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Filed January 29, 2009 in U.S. District Court at Lynchburg, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

Civil No: 6:08CV00022
ORDER
JUDGE NORMAN K. MOON

Tammy J. Shaw, et al., pro se
Plaintiffs

v.

Lynchburg Dept. of Social Services, et al.
Defendants

This matter is before the Court on the Federal Rule of Civil Procedure 12(b)(6) motions to dismiss filed by the Lynchburg Department of Social Services ("LDSS"), Eleanor Dunn, Sally Barca, Lisa Parks, and Robert Moore (collectively, the "Lynchburg Defendants")(docket no. 27), Governor Tim Kaine and Attorney General Bob McDonnell (docket no.7) and Dr. A.J. Anderson (docket no.11), the motion to quash service filed by the Lynchburg Defendants(docket no 26), and Shaw's motion to deny Kaine and McDonnell's motion to dismiss (docket no.16), motion for summary judgment (docket no. 18), motion to deny Dr. Anderson's motion to dismiss (docket no. 19), motion for joinder of real parties in

interest (docket no. 31), motion for Alexander Bell to be withdrawn as counsel (docket no. 33), motion to deny the Lynchburg Defendants' motion to dismiss (docket no.39), motion for miscellaneous relief (docket no. 41). For the reasons set forth in the accompanying Memorandum Opinion:

1. Each of the Defendants' separate motions to dismiss (docket nos. 7, 11, 27) are GRANTED. All counts of Shaw's Amended Complaint are dismissed, with prejudice;
2. Shaw's motions to deny the motions to dismiss (docket nos. 16, 19, 39) are DENIED;
3. Shaw's motion for summary judgment (docket no.18) is DENIED;
4. The Lynchburg Defendants' motion to quash service (docket no. 26) is DENIED as MOOT;
5. Shaw's motion for joinder of real parties in interest (docket no. 31) is DENIED;
6. Shaw's motion for Alexander Bell to be withdrawn as counsel (docket no.33) is DENIED; and
7. Shaw's motion for miscellaneous relief (docket no. 41) is DENIED.

Accordingly, the Court hereby TERMINATES this case and ORDERS it stricken from the active docket. The Clerk of the Court is hereby directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record and to Shaw.

It is so ORDERED.

Entered this 29th day of January, 2009.

/s/ Norman K. Moon

UNITED STATES DISTRICT JUDGE
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION.

Civil No. 6:08CV00022
MEMORANDUM OPINION
JUDGE NORMAN K. MOON

Tammy J. Shaw, et al., pro se
Plaintiffs

v

Lynchburg Dept. of Social Services, et al.
Defendants

This matter is before the Court on the Federal Rule of Civil Procedure 12(b)(6) motions to dismiss filed by the Lynchburg Department of Social Services ("LDSS"), Eleanor Dunn, Sally Barca, Lisa Parks, and Robert Moore (collectively, the "Lynchburg Defendants") (docket no. 27), Governor Tim Kaine and Attorney General Bob McDonnell(docket no.7), and Dr. A.J. Anderson(docket no.11) as well as the motion to quash service filed by the Lynchburg Defendants (docket no. 26) and several miscellaneous motions filed by Shaw (docket nos. 16, 18, 19, 31, 33, 39, 41). Because the Court lacks jurisdiction over Shaw's 1983 claim under the Rooker-Feldman doctrine and because Shaw fails to state a claim

under the ADA and the Rehabilitation Act, I will dismiss all counts of Shaw's Amended Complaint in a separate Order to follow. I decline to exercise supplemental jurisdiction over the remaining state law claims. For reasons that will be explained below, I will also deny as moot the motion to quash service filed by the Lynchburg Defendants and deny all of Shaw's miscellaneous motions.

I. BACKGROUND [1]

Tammy Shaw attempts to state claims on her own behalf, as well as on behalf of her minor children, KGS, CAS, and CJS, against the defendants in both their official and individual capacities for the deprivation of due process in violation of 42 U.S.C, 1983, violations of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, and violations of various state laws. These claims arise from actions that were allegedly taken (or not taken) during investigations, determinations and judicial and administrative hearings concerning child abuse allegation and counter-allegations made between Shaw and her ex-husband, the father of KGS, CAS, and CJS, The investigations and hearings at issue were conducted between 2005 and 2008 in the Juvenile and Domestic Relations Court("JDR Court") for the City of Lynchburg, the JDR Court and Circuit Court for the County of Amherst, and before the Virginia

1 Except where otherwise noted, the facts recited here are derived from the Amended Complaint. As required in the analysis of dismissal motions, these facts are assumed to be true for purposes of the motions. See e.g. Edwards v. City of Goldsboro, 178 F. 3d 231, 244 (4th Cir. 1999).

Department of Social Services. Aside from Governor Kaine and Attorney General McDonnell, the majority of the individual defendants are employees of the City of Lynchburg. Sally Barca is a caseworker with LDSS. Lisa Parks is also a caseworker and is Barca's direct supervisor at LDSS. Robert Moore is an investigator with the Lynchburg Police Department who works with LDSS. Eleanor Dunn is a deputy city attorney who represents LDSS on the City's behalf. Dr. A.J. Anderson is a licensed clinical psychologist. While Dr. Anderson is not employed by the City of Lynchburg, he conducted court-ordered psychological evaluations of Plaintiff's children in March, 2006.

The thrust of Shaw's rather prolix Amended Complaint is that several of the defendants violated her and/or her children's constitutional and statutory rights by suppressing credible evidence of physical and sexual abuse of Shaw's children by their father, providing misleading or false testimony at various custody hearings, and creating a false perception that Shaw's children were suffering from "parental alienation syndrome"[2] as a result of Shaw's actions.

2 "The parental alienation syndrome is a disorder that arises primarily in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent." R.A. Gardner, The Parental Alienation Syndrome (2d ed. 1998)

Shaw claims that the alleged actions by the defendants resulted in the destruction of her credibility and the ultimate abrogation of at least some of her custody rights over the children.3 Shaw also claims that Moore and Barca failed to provide the assistance of a qualified speech therapist for CJS, who suffers from a speech handicap, during an interview concerning allegations of sexual abuse against the child's father in April, 2007. Shaw filed the instant lawsuit on July 28, 2008, seeking redress under 42 U.S.C. 1983 for the defendants' alleged violations of her and her children's liberty interests under the Fourteenth Amendment, and under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act for the alleged failure to properly accommodate CJS.4 Shaw also asserts Virginia state law claims against all the defendants for violations of the Virginia Constitution and various sections of Virginia Code, against Dr. Anderson for malpractice, and against Dunn for violation of disciplinary rules governing attorney conduct.

3 It appears that Shaw is alleging that, as a result of the defendants' efforts, a protective order was entered against her in Amherst JDR Court on June 15, 2006 and that Shaw's ex-husband was awarded at least partial custody rights over the children in Amherst Circuit Court in September, 2008.

4 Shaw's Amended Complaint is ninety-six pages long and contains twenty-four different "counts". Many of the "counts" however, address the same conduct and allege violations of the same laws. I will address each potential legal claim identified, along with the alleged conduct that might be relevant to each claim. Instead of disposing of individuals "counts", I will dispose of the individual legal claims identified in the Amended Complaint

II. STANDARD OF REVIEW

"The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint," not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Edwards v. City of Goldsboro*, 178 F.3d 231, 243-44 (4th Cir.1999). In considering a Rule 12(b)(6) motion, a court must accept all allegations in the complaint as true and must draw all reasonable inferences in favor of the plaintiff. See id at 244; *Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246, 254-55 (W.D.Va.2001)

Although "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v Twombly*, 127 S.Ct.1955, 1964-65 (2007)(alteration in original omitted)(citations omitted) (internal quotation marks omitted). Instead, "factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Id at 1965 (citations omitted). Rule 12 (b)(6) does "not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face:"; plaintiffs must "nudge their claims across the line from conceivable to plausible" or "their complaint must be dismissed." Id. At 1974. As the Fourth Circuit has held, a plaintiff "must sufficiently allege facts to allow the

Court to infer that all elements of each of his causes of action exist." *Jordan v. Alternative Res. Corp.*, 458 F.3d 332, 344-345 (4th Cir.2006).

Because pro se complaints "represent the work of an untutored hand requiring special judicial solicitude," courts must construe them liberally. *Baudette v. City of Hampton*, 775 F.2d 1274, 1277-1278 (4th Cir. 1985). Dismissal of a pro se complaint is thus only appropriate when it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Haines v. Kerner*, 404 U.S. 519, 521 (1972)(internal quotations omitted). Courts need not, however, "conjure up questions never squarely presented to them...Even in the case of pro se litigants, they cannot be expected to construct full blown claims from sentence fragments." Id. At 1278. The requirement of liberal construction does not mean that courts can ignore a clear failure in the pleading to allege facts that set forth a cognizable claim. See *Weller v. Department of Social Services*, 901 F.2d 387 (4th Cir 1990).

III.DISCUSSION

Even when analyzed under the liberal pro se standard of review for motions to dismiss, the Amended Complaint fails to state any claims for which relief may be granted. As the following sections will explain, the Court lacks jurisdiction over the 1983 claim under the *Rooker-Feldman* doctrine, and the ADA and Rehabilitation Act claims fails because Shaw is

prohibited from litigating them pro se on her children's behalf.

A. *ROOKER-FELDMAN* DOCTRINE

Although none of the parties address the *Rooker-Feldman* doctrine with any specificity in their briefs, it may be raised by the Court sua sponte before considering the merits of a claim because it is a jurisdictional doctrine. *See Friedman's Inc. v Dunlap*, 290 F.3d 191, 195 (4th Cir 2002); *see also Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)("Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case." The *Rooker-Feldman* doctrine prohibits "lower federal courts from considering not only issues raised and decided in the state courts, but also issues that are "inextricably intertwined" with the issues that were before the state court." *Washington v. Wilmore*, 407 F.3d 274, 279 (4th Cir.2005)(quoting *D.C. Court of Appeals v.*

Feldman, 460 U.S. 462, 486 (1983). Accordingly, when the success of a federal claim depends upon a determination "that the state court wrongly decided the issues before it," a federal court lacks jurisdiction to entertain its merits, *See Wilmore*, 407 F.3d at 279 (citing *Brown & Root v. Breckenridge*, 211 F.3d 194,198(4th Cir. 2000)(citations omitted)). The doctrine ensures that federal district courts exercise only original jurisdiction and guarantees that

review of state court judgments is conducted at the federal level only by the U.S. Supreme Court, as Congress intended. *See Brown & Root, Inc.* 211 F.3d at 198-99.

Shaw's 1983 claim is barred from consideration by the *Rooker-Feldman* doctrine because it is "inextricably intertwined" with issues that were already considered and decided in custody hearing by several state courts, particularly the Amherst County JDR Court and Circuit Court. These issues include, but are not necessarily limited to, allegation that LDSS and its caseworkers failed to properly follow up on various allegations of physical and sexual abuse lodged by Shaw against her children's father, that Barca worked with Dr. Anderson to compile evidence of parental alienation by Shaw, and that Barca and Dr. Anderson provided false or misleading statements in custody hearings. While Shaw attempts to re-hash these issues in federal court, the state courts already considered these issues and weighed the evidence presented by the defendants in the various custody hearings. This Court may not re-weigh the evidence and credibility of witnesses that were before the state courts in the various custody proceedings. Recognizing that Shaw's due process rights were violated in light of the defendants' alleged misconduct would require a determination that one or all of the state courts wrongly decided the issues before them. This Court is prohibited from making such determination.

Numerous other courts have applied the *Rooker-Feldman* doctrine in cases similar to Shaw's where a parent claims that the state court decision was unconstitutional or was premised upon

constitutional violations by agents of the state. *See, e.g. Hoblock v. Albany County Bd. Of Elections*, 422 F.3d 77, 87 (2d Cir.2005); *Simmons v. Huff*, 70 Fed.Appx. 136 (E.D. Va.2003); *Duby v. Morgan*, 901 F. Supp. 215, 216 (S.D. W.Va.1995). If Shaw wishes to address the alleged violations of due process that occurred in conjunction with the state court proceedings, she may not lodge a collateral attack in federal court; she must instead seek recourse in the state court system. *See Feldman*, 460 U.S. at 482; *Anderson v. Colorado*, 793 F 2d 262, 263(10th Cir. (1986)("Where a constitutional issue could have been reviewed on direct appeal by the state appellate courts, a litigant may not seek to reverse or modify the state court judgment by bringing a constitutional claim under 42 U.S.C. 1983.") Because the Court lacks jurisdiction to entertain Shaw's 1983 claim under *Rooker-Feldman* doctrine, it must be dismissed. It is unnecessary to pass on the merits of the claim or any deficiencies in the claim that were presented by the defendants in the motions to dismiss.

B. SECTION 504 OF THE REHABILITATION ACT AND TITLE II OF THE ADA

Shaw also attempts to bring claims on behalf of her minor child CJS under 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). The factual basis of both of these claims is that Barca and Moore failed to properly accommodate CJS in an April, 2007 interview concerning allegations of sexual abuse against the child's father. Shaw claims that Moore and Barca should have obtained the assistance of a qualified

constitutional violations by agents of the state. *See, e.g. Hoblock v. Albany County Bd. Of Elections*, 422 F.3d 77, 87 (2d Cir.2005); *Simmons v. Huff*, 70 Fed.Appx. 136 (E.D. Va.2003); *Duby v. Morgan*, 901 F. Supp. 215, 216 (S.D. W.Va.1995). If Shaw wishes to address the alleged violations of due process that occurred in conjunction with the state court proceedings, she may not lodge a collateral attack in federal court; she must instead seek recourse in the state court system. *See Feldman*, 460 U.S. at 482; *Anderson v. Colorado*, 793 F 2d 262, 263(10th Cir. (1986)("Where a constitutional issue could have been reviewed on direct appeal by the state appellate courts, a litigant may not seek to reverse or modify the state court judgment by bringing a constitutional claim under 42 U.S.C. 1983.") Because the Court lacks jurisdiction to entertain Shaw's 1983 claim under *Rooker-Feldman* doctrine, it must be dismissed. It is unnecessary to pass on the merits of the claim or any deficiencies in the claim that were presented by the defendants in the motions to dismiss.

B. SECTION 504 OF THE REHABILITATION ACT AND TITLE II OF THE ADA

Shaw also attempts to bring claims on behalf of her minor child CJS under 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). The factual basis of both of these claims is that Barca and Moore failed to properly accommodate CJS in an April, 2007 interview concerning allegations of sexual abuse against the child's father. Shaw claims that Moore and Barca should have obtained the assistance of a qualified

speech therapist to assist with the interview because CJS has a severe speech handicap that renders her unable to communicate effectively.

These claims, unlike Shaw's 1983 claim, are not categorically barred from consideration under the *Rooker-Feldman* doctrine. It does not appear that the allegations that Shaw lodges on CJS's behalf are "inextricably intertwined" with issues that were raised and considered in the state court custody proceedings, or that rendering judgment in Shaw's favor on these claims would require a determination that the state courts wrongly decided the issues before them. In other words, this Court could find that CJS's rights were violated under the ADA and the Rehabilitation Act without re-weighing the evidence and the credibility of witnesses that were before the state courts in the various custody proceedings and without implying that any of the state court judgment abrogating Shaw's custody rights were wrongly decided.

Regardless, these claims fail because Shaw is prohibited from litigating them pro se on CJS's behalf. It is well-settled that, absent unique circumstances, a parent may not litigate a claim pro se on behalf of her children. *Myers v. Loudon County Public Schools*, 418 F. 3d 395, 401 (4th Cir. 2005)("non-attorney parents generally may not litigate the claims of their minor children in federal court.") *see also Gallo v. United States*, 331 F. Supp. 2d 446, 447 (E.D.Va, 2004)(noting that "courts are nearly unanimous in holding that a parent or guardian cannot

sue on behalf of a child without securing counsel.")[5] "The right to litigate for oneself...does not create a coordinate right to litigate for others." *Myers*, 418 F.3d at 400 (emphasis in original). By permitting the layman to litigate only for himself, this restriction protects the rights of those before the court while also safeguarding the court and the pro se litigant's adversaries "from poorly drafted, inarticulate, and vexatious claims." Id. (citing *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975)); *Collinsgru v. Palmyra Bd. Of Educ.*, 161 F. 3d 225, 231 (3d Cir. 1998). Because any alleged actions by Barca or Moore would be violations of CJS's (not Shaw's) rights under the Rehabilitation Act and the ADA, Shaw lacks standing to litigate these claims pro se on CJS's behalf.[6] The claims must be dismissed.

5 Courts have allowed parents to litigate pro se on behalf of their children in the special context of appeals of administrative denials of social security income (SSI) benefits. *See e.g. Machadio v. Apfel* 276 F.3d 103, 106 (2d Cir. 2002); Harris v Apfel, 209 F.3d 413, 417 (5th Cir.2000). In Myers, the Fourth Circuit noted that parents might be permitted to litigate their children's claims in the context of an SSI appeal because of "the unique policy considerations involved in such cases." Myers, 418 F.3d at 401, n.7. Such unique considerations are not present in this case and I decline to broaden the exception to the general rule prohibiting parents from litigating their children's claims pro se.

6 For similar reasons, Shaw's "motion for joinder of the real parties in interest" should be denied. In the motion, Shaw asks the Court to join her children as plaintiffs in the case pursuant to Federal Rule of Civil Procedure 17(a)(3). Regardless of whether Shaw's children were properly joined as plaintiffs in this case, however, the Rehabilitation Act and the ADA claims would fail because Shaw is prohibited from litigating those claims pro se on her children's behalf.

C. STATE LAW CLAIMS

The Amended Complaint contains claims against all the defendants for violations of the Virginia Constitution and numerous sections of the Virginia Code, against Dr. Anderson for malpractice, and against Dunn for violations of disciplinary rules governing attorney conduct. A district court may decline to exercise supplemental jurisdiction over state law claims if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C. 1367. Because all of the federal claims over which this Court has original jurisdiction should be dismissed, I decline to exercise supplemental jurisdiction over Shaw's various state law claims.

D. MISCELLANEOUS MOTIONS

In addition to the motions to dismiss, several other motions are ripe for decision. The first concerns the manner in which Shaw attempted to serve the Lynchburg Defendants. After filing the Amended Complaint, Shaw left a copy of it and the summons with individuals who sat at the front desks of the office buildings where each of the Lynchburg Defendants worked (Barca and Parks at the front desk of LDSS, Dunn at the front desk of Lynchburg City Hall, and Moore at the front desk of the Lynchburg Police Station.) Because the Lynchburg Defendants believed that Shaw did not accomplish proper service under Federal Rule of Civil

Procedure 4(e), they did not respond to the Amended Complaint within the twenty-day deadline set forth in the summons. On January 2, 2009, Shaw filed a

"motion for summary judgment", requesting that the Court enter default judgment in her favour against the Lynchburg Defendants in light of their failure to respond to the Amended Complaint. On January 7, 2009, the Lynchburg Defendants filed a motion to quash service, which explained that they did not respond to the Amended Complaint because service was insufficient under Rule 4(e). Because this case must be dismissed for the reasons already stated, however, I decline to address the issue of whether the Lynchburg Defendants were properly served under Rule 4(e), The motion to quash service is therefore moot and should be denied. 7For the same reasons, default judgment in Shaw's favour would be inappropriate under these circumstances, and her "motion for summary judgment" should be denied.

Finally, Shaw also filed a motion requesting that the Court enter an order requiring Alexander Bell, counsel for the Lynchburg Defendants, to withdraw from this case on the grounds that he is not authorized to appear as "special counsel" under Virginia Code 2.2-507 and -510. Because this case should be dismissed for the jurisdictional and substantive reasons already discussed and because the deficiencies in Shaw's pleadings are apparent on their face irrespective of any filings that were made by the Lynchburg Defendants, Shaw's motion to have Bell withdrawn as counsel is moot and should be denied.

7 For the same reasons, Shaw's motion for miscellaneous relief (docket no. 41) should also be denied.

IV. CONCLUSION

The Amended Complaint must be dismissed because the Court lacks jurisdiction to entertain Shaw's 1983 claim and because Shaw may not litigate the ADA and Rehabilitation Act claims pro se on her children's behalf. I decline to exercise supplemental jurisdiction over the remaining state law claims. I will grant the defendants' motions to dismiss in a separate Order to follow. [8] The remainder of outstanding motions will be denied. The clerk of the Court is hereby directed to send a certified copy of this Memorandum Opinion and the accompanying Order to all counsel of record and to Shaw.

Entered this 29th day of January, 2009.

/s/ Norman K. Moon

UNITED STATES DISTRICT JUDGE

8 Counsel for Kaine and McDonnell scheduled a hearing on the motions to dismiss for March 13, 2009. In the interest of efficiency, I will decline to hold a hearing on any of these motions. The facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

INFORMAL BRIEF

Case No. 09-1210
Tammy Shaw
v.
Lynchburg Department of Social Services
6:08-cv-00022-nkm-mfu

1. (A) United States District Court Western District of Virginia

   (B) January 29, 2009

2. N/A

3. Issues for Review

   (1) Shaw alleges that the Rooker-Feldman doctrine is not applicable in this case, wherefore, the Complaint should not be barred from consideration due to such doctrine.

   Supporting Facts and Argument

This lawsuit was not filed seeking redress as referenced in "Memorandum Opinion", page 3, January 29, 2009. Shaw filed suit to address the intentional or willful misconduct and malicious purpose of actions taken by the defendants with disregard and disrespect of law(s) and the Constitutional rights of the Shaws. This 1983 claim

is not "inextricable intertwined" with issues that have been considered and decided in various hearings. Shaw would like to clear a mention of "various custody hearings" referenced in "Memorandum Opinion", page 6 January 29, 2009, briefly, there has not been various custody hearings. In brief, Shaw, mother was given sole legal and physical custody of each at the divorce hearing in March, 2006, and Shaw, mother, had agreed to share custody for high school preferences of one child which was heard and made order of court in September, 2008, with joint legal of siblings. Shaw did not appeal this decision and has not invited the district court to review or reject any such judgment of a state court. The "Memorandum Opinion", page 3, footnote 3, January 29, 2009, states that a protective order was entered against her, Shaw, in Amherst JDR Court on June 15, 2006. To the contrary, it was entered against the father of the children, at the request of Shaw realizing that no one with authority to stand for the children were taking action(s) to see to the safety of the children as is shown in the Amended Complaint. This protective order is made part of the complaint with direct relation to the allegations of the defendant(s) obstruction of justice, violating the constitutional rights of the Shaws under 42 U.S.C. 1983 Fourteenth Amendment-Section 1—not to redress any judgment of a Court. Regardless of the defendant(s) attempt and support to prevent this P.O. against the father, it was entered. With full knowledge of the issuance of this protective order and participation in this hearing, the defendant(s)

later approached the Court to obtain an ex parte protective order against Shaw, denying to the court participation in any other hearing and with support of a multidisciplinary team member claimed to be the Guardian ad Litem for the children.

This constitutes a fraudulent act, interfering with justice and violating the Constitutional rights of Shaw and the children under 42 U.S.C. 1983 Fourteenth Amendment Section 1. The case of this ex parte was dismissed with no protective order being issued against Shaw. This is introduced in Count 4, Page 3, and detailed as "malicious prosecution" in Count 14 of the Amended Complaint. Citation: A function is governmental if "directly tied to health, safety and welfare of the citizens." Niese 564 S.E. 2d at 131. 'By contrast, when a municipality performs a proprietary or commercial function, it is not entitled to sovereign immunity." Niese 564 S.E. 2d at 132

In 2005, the Supreme Court revisited the doctrine in Exxon Mobil Corp. v Saudi Basic Industries Corp. 544 U.S. 280(2005). The Court affirmed that the Rooker-Feldman doctrine was statutory (based on the certiorari jurisdiction statute, 28 U.S.C. 1257), and not jurisdictional, holding that it applies only in cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." The Supreme Court has continued to narrow the doctrine, as in Lance v. Dennis, 126 S. Ct. 1198 (2006)seems to want to minimize the use of the doctrine. For a mock obituary of the doctrine, see

Samuel Bray, Rooker-Feldman (1923-2006) 9 Green Bag 2d, 317.

(2) Shaw alleges that the Complaint should not be dismissed for reason of a parent being prohibited from litigating pro se on the behalf of the children.

Shaw's motion to join the children with Shaw as their next friend (Joinder of real parties in interest), Docket 31 was denied. The "Memorandum Opinion", page 8, states "absent unique circumstances, a parent may not litigate a claim pro se on behalf of her children", with footnote, 5, stating the Court declined to broaden the exception to the general rule prohibiting parents from litigating their children's claims pro se. Shaw alleges this case does contain unique circumstances deserving of broadening the exception to the general rule. Shaw sought to find counsel to represent their rights and the rights of this parent. Although Shaw was advised by local counsel of the cause of action in this case, Shaw was unsuccessful with local attempts of obtaining counsel for such reasons as conflict of interest, understandable when one considers the professions of the defendants. Counsel outside of Lynchburg agreed to accept the case with a retainer of $150,000., which was beyond the reach of this parent. Shaw began research of pro se cases in an attempt to protect the rights of the children and herself, case of interest, Citation 282F Supp 2d, 439, in which the parent of a minor child filed as next friend of the child. Shaw proceeded with filing pro se, joining the three children.

The denial of joining the children under the circumstances given in Shaw's complaint is an unfair hindrance to Shaw, a natural parent with a legal obligation to protect the children, created by statute of sovereign, Virginia Code 16.1-228, and unfair to the children, deserving of protection of their constitutional rights. The "Memorandum Opinion" , page 8, footnote 6, states, "Regardless of whether Shaw's children were properly joined as plaintiffs in this case, however, the Rehabilitation Act and the ADA claims would fail because Shaw is prohibited from litigating those claims pro se on her children's behalf." The U.S. Court of Appeals for the First Circuit: "IDEA expressly contemplates that parents will act as advocates for their children at every stage of the administrative process, from initial IEP meetings to administrative due process hearings—A rule prohibiting pro se representation would subvert Congress's intent by denying many children with special needs their day in court. Where parents could not obtain representation or chose not to pay for counsel, many children with special needs would be precluded from exercising their statutory right to judicial review of their administrative due process hearings." Maroni v. Pemi Baker Regional School (1st Cir. 2003). "The interest of a child who is made a party to a federal court action in adequate legal representation also implicates federal concerns. As the Ninth Circuit has correctly recognized, "the infant is always the ward of every court wherein his rights or property are brought into jeopardy, and is entitled to the most jealous care than no injustice be done to him." Johns, 114 F, 3d at 877 (emphasis added).

(3) Motion to Quash Service on "Lynchburg Defendants" denied as Moot

Supporting Facts and Argument

Shaw alleges that the defendants are not accurately identified. The "Memorandum Opinion" page 2, January 29, 2009, states that "Aside from Governor Kaine and Attorney General McDonnell, the majority of the individual defendants are employees of the City of Lynchburg"with no reference given to defendant Mark Johnson. The Memorandum Opinion references Dr. Anderson as a licensed clinical psychologist that conducted court-ordered evaluation of Shaw's children in March, 2006, and not employed by the City of Lynchburg. However, no reference is given to Anderson's evaluation of Shaw, which is a most relevant fact upon which much of this civil case rest, directly relating to the Shaw's constitutional violations by Dr. Anderson under 42 U.S.C. 1983, 14th Amendment. This is referenced in Count 10 of the Amended Complaint. Shaw alleges the defendants, Barca and Parks, are state employees. Shaw alleges the defendants, Dr.Anderson, Dunn and Moore, acted as state actors, created by Virginia statute, as members of a multidisciplinary team, ref. Va. Code 63.2-1503. Defendant Mark Johnson, the director of the VDSS local agency, is alleged to be a public officer, with Virginia statute creating a position for him, both as one who "fosters" the multidisciplinary team and the person who conducts (or designates someone to conduct) the Local Conference of the VDSS agency appeal, allowing him to use discretion in decision making. The facts in the Amended Complaint

introduce Barca making contact with Anderson, psychologist, during her initial steps of a family assessment regarding allegations of physical abuse, and later introduces Dunn as counsel. The defendant, Dunn, was also a part of Barca's initial steps of the family assessment, May, 2006, of which Shaw had no knowledge. Shaw, having sole legal and physical custody of the three children,was unaware of this defendant's involvement until August, 2006. It is seemingly senseless that a caseworker would contact a psychologist and an attorney during such a job performance. When one recognizes Anderson and Dunn as state actors, acting as members of a multidisciplinary team created by statute, it is understandable that team members may contact other team members at any time for any cause. At the time Shaw filed an appeal with VDSS, September 2006, the local agency requested more time to seek counsel. Shaw alleges the defendant, Dunn, was not counsel for the agency but performed the role of a state actor as a team member. Accurate identification of all defendants is critical as it determines proper process of service, granting and dismissal of motions and other decisions, including but not limited to liabilities of parties and entities.

Civil Rights 78-1325. 78 Civil Rights 78III Federal Remedies in General, 78k1323, Color of Law, 78k1325k State or Territorial Action or Individual or Private Action, in General. Most Cited Cases Section 1983's "color of state law" requirement excludes from the reach of 1983 all merely private conduct, no matter how discriminatory or wrongful, but includes within its scope apparently private actions which have a sufficiently close nexus with the state to be fairly

treated as that of the state itself. 42 U.S.C. 1983

****

283-116. 283 Officers and Public Employees, 283III Rights, Powers, Duties and Liabilities 283k115 Liabilities for Negligence or Misconduct, 283k116k In General. Most Cited Cases

While personal liability for mere negligence turns on question of whether individual is public officer or employee, distinction is immaterial if individual's actions are corrupt or malicious or are outside and beyond scope of his duties, both employees and public officers are liable for damages proximately caused by such actions.

****

"A public officer is someone whose position is created by the constitution or statutes of the sovereign." *State v. Hord*, 264 N.C. 149, 155, 141 S.E. 2d 241, 245 (1965) "An essential difference between a public office and mere employment is the fact that the duties of the incumbent of an office shall involve the exercise of some portion of sovereign power." Id. Officers exercise a certain amount of discretion, while employees perform ministerial duties.

Discretionary acts are those requiring personal deliberation, decision and judgment; duties are ministerial when they are "absolute, certain, and imperative, involving merely the execution if a specific duty arising from fixed and designated facts." Jensen v S.C. Dept. of Social Services, 297 S.C. 323, 377 S.E.2d 102 (1988).

4. Relief Requested

To test the sufficiency of this Complaint, Shaw request that each count be considered for content of constitutional violation under 42 U.S.C. 1983 Fourteenth Amendment Section 1, 42 U.S.C. 1985 (3), Count 23 , and other parts of the constitution as stated within the Complaint for which Shaw and the children are entitled to relief. All counts are relevant, with some expanding explanations of previous ones without repetition. Some counts may require discussion or oral argument due to the allegations of the actions of the professional defendants that are in complete reversal from common expectations. Shaw is requesting in lieu of considering only the individual legal claims, reference in issues, that each Count be considered for disposal or survival as part of the decision of the Court.

Shaw request that each Motion, filed by all parties to this case, including affidavits or memorandum of laws if applicable, be reviewed, Considering the arguments filed herewith, certain determinations are critical in the decision(s) of the granting or dismissal of each.

5. Prior Appeals

Shaw has never filed a case in this court.

/s/ Tammy J. Shaw

Supreme Court, U.S.
FILED
APR 1 - 2010
OFFICE OF THE CLERK

No. 09-1073

In The Supreme Court of the United States

TAMMY J. SHAW,

Petitioner,

v.

LYNCHBURG DEPARTMENT OF SOCIAL SERVICES, *ET AL.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT DR. A. J. ANDERSON'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

N. Beth Dorsey, Esq. (VSB No. 47663)
Counsel of Record
Jodi B. Simopoulos, Esq. (VSB No. 68789)
HANCOCK, DANIEL, JOHNSON & NAGLE, P.C.
Post Office Box 72050
Richmond, Virginia 23255-2050
Ph: 804.967.9604
Fax: 804.967.9888
Counsel for Respondent Dr. A. J. Anderson

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTIONS PRESENTED

Respondent disagrees with the questions presented as set forth by Petitioner. Respondent states the questions presented as follows:

1. Whether the United States Court of Appeals for the Fourth Circuit properly affirmed the decision of the District Court holding that it lacked jurisdiction over Petitioner's 42 U.S.C. § 1983 claim pursuant to the Rooker-Feldman Doctrine.

2. Whether the United States Court of Appeals for the Fourth Circuit properly affirmed the decision of the District Court holding that Petitioner Shaw could not represent her children *pro se* for the purpose of claims under § 504 of the Rehabilitation Act and Title II of the ADA.

3. Whether Petitioner may raise an argument regarding the protections of the Due Process Clause for the first time in her Petition for a Writ of Certiorari.

LIST OF PARTIES

Respondent disagrees with the list of parties as set forth by Petitioner. Respondent states the parties are as follows:

Petitioner:

Tammy J. Shaw, *pro se*

Respondents:

Timothy Kaine, Governor of Virginia

Robert F. McDonnell, State Attorney General

Eleanor Dunn, Lynchburg Deputy City Attorney

Mark Johnson, Director of Lynchburg Department of Social Services

Lisa Parks, Department of Social Services

Sally Barca, Department of Social Services

Robert W. Moore, Lynchburg Police Department

Dr. A. J. Anderson

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

CONSTITUTIONAL AND STATUTORY PROVISIONS 1

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE PETITION 5

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

Berrios v. New York City Housing Authority,
564 F.3d 130 (2nd Cir. 2009) 12

Boggs v. Boggs,
520 U.S. 833, 117 S. Ct. 1754 (1997) 8

Brown v. Newberger,
291 F.3d 89 (1st Cir. 2002) 10

In re Burrus,
136 U.S. 586, 10 S. Ct. 850 (1890) 8

Cheung v. Youth Orchestra Foundation Buffalo, Inc., 906 F.2d 59 (2d Cir. 1990) 12

City of Springfield v. Kibbe,
480 U.S. 257, 107 S. Ct. 1114 (1987) 16

Davini v. Virginia Department Transport,
434 F.3d 712 (4th Cir. 2006) 7

Devine v. Indian River County Sch. Board,
121 F.3d 576 (11th Cir. 1997) 13

Elustra v. Mineo, 595 F.3d 699 (7th Cir. 2010) 12

Exxon Mobil Corp. v. Saudi Basic Industrial Corp., 544 U.S. 280, 125 S. Ct. 1517 (2005) 6, 7

Hughes v. Long, 242 F.3d 121 (3d Cir. 2001) 10

Johns v. County of San Diego,
114 F.3d 874 (9th Cir. 1997) 13

Meeker v. Kercher,
782 F.2d 153 (10th Cir. 1986) 13

Myers v. Loudoun County Public Sch.,
418 F.3d 395 (4th Cir. 2005) 12, 13

Navin v. Park Ridge Sch. District,
270 F.3d 1147 (7th Cir. 2001) 12

Oseai-Afriyie v. Medical College Pennsylvania,
937 F.2d 876 (3d Cir. 1991) 13

Ostrzenski v. Seigel,
177 F.3d 245 (4th Cir. 1999) 10

Shepherd v. Wellman,
313 F.3d 963 (6th Cir. 2002) 13

Singleton v. Wulff,
428 U.S. 106, 96 S. Ct. 2868 (1976) 16

Turney v. O'Toole,
898 F.2d 1470 (10th Cir. 1990) 10

West v. Atkins,
487 U.S. 42, 108 S. Ct. 2250 (1988) 10

CONSTITUTION AND STATUTES

U.S. Const. amend. XIV § 1 1

42 U.S.C. § 1983 ..... passim

Rehabilitation Act of 1973 § 504,
29 U.S.C. § 794 ..... 1, 3, 4, 11

Title II of the Americans with Disabilities Act
of 1990, 42 U.S.C. §§ 12131, *et seq* 1, 2, 3, 4, 11

RULES OF THE SUPREME COURT OF THE UNITED STATES

Sup. Ct. R. 14.1(h) 9, 14, 16

Sup. Ct. R. 14.4 ..... 9, 14, 15

Sup. Ct. R. 14.2 ..... 14, 18

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at 332 Fed. Appx. 883 and is reproduced in the Appendix to the Petition for a Writ of Certiorari (hereinafter, "Pet. App.") at A. The opinion of the United States District Court for the Western District of Virginia, Lynchburg Division is reported at 2009 U.S. Dist. LEXIS 6659 and is reproduced in Pet. App. at B.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Respondent disagrees with the constitutional and statutory provisions as set forth by Petitioner. Respondent states the constitutional and statutory provisions generally involved in this appeal are as follows:

1. U.S. Const. amend. XIV § 1;

2. 42 U.S.C. § 1983;

3. Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794; and

4. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131, *et seq.*

STATEMENT OF THE CASE

Respondent disagrees with the statement of the case as set forth by Petitioners. Respondent sets forth the statement of the case as follows:

Petitioner, Tammy Shaw, (hereinafter "Shaw") filed her Amended Complaint with the United States District Court for the Western District of Virginia on November 24, 2008. Shaw represents herself, *pro se*, and through her Amended Complaint she attempted to set forth claims on her own behalf, and also on behalf of her minor children.

Shaw's ninety-six page Amended Complaint sets forth twenty-four "counts" against Virginia Governor Tim Kaine, Attorney General Bob McDonnell, various employees of the City of Lynchburg, and this Respondent, A. J. Anderson, Ph.D. (hereinafter, "Dr. Anderson"), a licensed clinical psychologist who conducted psychological evaluations of Shaw's children pursuant to a court order. Pet. App. at B, section I.

In his Memorandum Opinion dated January 29, 2009, the Honorable Norman K. Moon of the United States District Court for the Western District of Virginia, Lynchburg Division, (hereinafter "Judge Moon") addressed Shaw's twenty-four various "counts" as several individual claims. Id. Pertinent to Shaw's Petition for a Writ of Certiorari are Shaw's claims for: 1) deprivation of due process in violation

of 42 U.S.C. § 1983, 2) violation of Section 504 of the Rehabilitation Act of 1973, and 3) violation of Title II of the Americans with Disabilities Act.

With regard to her § 1983 claim, Shaw essentially alleged that the various Respondents violated her due process rights during investigations and judicial and administrative hearings conducted in the Juvenile and Domestic Relations Courts for the Cities of Lynchburg and Amherst, the Circuit Court for the County of Amherst, and before the Virginia Department of Social Services. See Amended Complaint; see also, Pet. App. at B, section I. Shaw contended that as a result of the Respondents' alleged behavior during these investigations and hearings regarding custody and child abuse allegations, her credibility was destroyed and she lost some custody rights over her children. Id.

Shaw's other two claims relate to her contention that two of the Respondents, Robert Moore and Sally Barca, both employees of the City of Lynchburg, failed to provide the assistance of a qualified speech therapist for the minor child CJS during an interview concerning allegations of sexual abuse by CJS' father. Id. Shaw contended that this failure violated Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA. Id.

Judge Moon dismissed all three claims in his January 29, 2009, Memorandum Opinion. Pet. App. at B. Judge Moon held that the District Court

lacked jurisdiction over Shaw's § 1983 claim pursuant to the Rooker-Feldman doctrine. Furthermore, Judge Moon held that Shaw failed to state a claim under the Rehabilitation Act or ADA because Shaw was prohibited from litigating these claims *pro se* on her child's behalf. Id.

Shaw appealed Judge Moon's dismissal of these three claims to the United States Court of Appeals for the Fourth Circuit. The issues reviewed by the Court of Appeals, which are pertinent to the instant Petition for a Writ of Certiorari were: 1) whether the Rooker-Feldman doctrine was applicable to this case and 2) whether a parent could be prohibited from litigating *pro se* on behalf of her children. See Shaw's Informal Brief to the Fourth Circuit, Pet. App. at C.

On September 22, 2009, the Court of Appeals issued an unpublished *per curiam* opinion affirming Judge Moon's decision on both counts. Pet. App. at A. After reviewing the record, the Court found no reversible error and affirmed the ruling of the District Court for the reasons stated by Judge Moon in his opinion. Id.

Shaw has filed this Petition for a Writ of Certiorari (hereinafter "Petition"). She has presented three questions. Her first two questions relate to issues addressed by the District Court and the Court of Appeals for the Fourth Circuit, and concern, respectively: 1) whether the Rooker-Feldman

Doctrine applies in this case and 2) whether a non-lawyer parent can litigate *pro se* on behalf of her or her minor child. Shaw's third question presented was not addressed by either the District Court or the Court of Appeals, and is raised for the first time in her Petition. In this third question, she inquires whether the Due Process Clause safeguards citizens from unconstitutional "inactions" as well as "actions."

REASONS FOR DENYING THE PETITION

I. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S HOLDING THAT IT LACKED JURISDICTION OVER SHAW'S 42 U.S.C. § 1983 CLAIM PURSUANT TO THE ROOKER-FELDMAN DOCTRINE.

In her Amended Complaint, Shaw attempted to set forth a claim that the Respondents violated her due process rights under 42 U.S.C. § 1983. Shaw's allegations all arose out of issues relating to her underlying domestic relations cases. Her allegations related to the various Respondents' behavior during custody and child abuse hearings and investigations conducted in the Juvenile and Domestic Relations Courts for the Cities of Lynchburg and Amherst, the Circuit Court for the County of Amherst, and before the Virginia Department of Social Services. Shaw claims that as a result of the Respondents' behavior her credibility was destroyed and she lost some custody rights over her children.

With regard to this first question presented, the Petition should be denied for three reasons. First, the Rooker-Feldman Doctrine was appropriately applied by the District Court in this case. Second, Shaw has set forth no reason for granting her Petition with regard to the Rooker-Feldman Doctrine. Third, regardless of whether the Rooker-Feldman Doctrine precluded the District Court from exerting jurisdiction over Shaw's § 1983 claim, Judge Moon properly dismissed the claim.

A. The Court of Appeals properly affirmed the District Court's application of the Rooker-Feldman Doctrine in this case.

The Court of Appeals was correct in affirming Judge Moon's decision because the District Court lacked jurisdiction over Shaw's 42 U.S.C. § 1983 claim pursuant to the Rooker-Feldman Doctrine.

This Court recently held that the Rooker-Feldman Doctrine applies when the following conditions are met: (1) the federal court plaintiff lost in state court; (2) the plaintiff complains of "injuries caused by state-court judgments;" (3) the state court judgment was rendered before the proceedings in federal court commenced; and (4) the federal plaintiff "invit[es] district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 1522 (2005).

Analyzing this Court's opinion in Exxon Mobile Corp., the Fourth Circuit Court of Appeals has stated, "[i]f the state-court loser seeks redress in the federal district court for the injury caused by the state court decision, his federal claim is, by definition, 'inextricably intertwined' with the state-court decision, and is therefore outside the jurisdiction of the federal district court." Davini v. Virginia Dep't Transp., 434 F.3d 712, 719 (4th Cir. 2006)(internal citations omitted).

In the case below, all of the conditions set forth by this Court in Exxon Mobil Corp. were met. First, Shaw lost several protective order and custody hearings throughout 2006 in the Amherst and Lynchburg J&DR and Circuit Courts. Amended Complaint, Count 10, pp. 1-9, Count 14, p. 1; see also, Pet. App. at B, sections I and III.A. Second, Shaw alleges that Respondents' actions caused damage to her credibility, caused her to lose these various protective order and custody hearings, and injured her by resulting in loss of certain of her custody rights. Id.; Pet. App. at B, section I. Third, the judgments of the J&DR and Circuit Courts were rendered prior to the institution of Shaw's federal action on July 28, 2008. Amended Complaint, Count 10, p. 6. Fourth, Shaw, through her Amended Complaint, sought that the District Court review and reject the various judgments of the state J&DR and Circuit Courts.

Judge Moon specifically noted that Shaw was seeking redress in the federal court for the injuries allegedly caused by the state court decisions. In his January 19, 2009 memorandum opinion, he held, "[r]ecognizing that Shaw's due process rights were violated in light of the defendants' alleged misconduct would require a determination that one or all of the state courts wrongly decided the issues before them." Pet. App. at B, section III.A. The Court of Appeals affirmed "for the reasons stated by the district court." Pet. App. at A.

Moreover, Shaw's federal case arose solely out of the domestic relations matters in the J&DR and Circuit Courts. This Court has recognized that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States, and not to the laws of the United States." In re Burrus, 136 U.S. 586, 593-94, 10 S. Ct. 850, 853 (1890); Boggs v. Boggs, 520 U.S. 833, 848, 117 S. Ct. 1754, 1764 (1997). Shaw was seeking redress of these domestic relations matters in federal court, and therefore the Rooker-Feldman doctrine applied.

Accordingly, because the District Court lacked jurisdiction under the Rooker-Feldman Doctrine, the Court of Appeals properly affirmed its application, and Shaw's Petition should be denied.

B. Shaw has set forth no reason for granting her Petition with regard to the application of the Rooker-Feldman Doctrine.

Rule 14.2 requires that "[a]ll contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition, as provided in subparagraph 1(h) of this Rule." Sup. Ct. R. 14.2. Subparagraph 1(h), in turn, mandates that the Petitioner must provide "[a] direct and concise argument amplifying the reasons relied upon for allowance of the writ." Sup. Ct. R. 14.1(h). Failure to present "with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason" for denial of a petition. Sup. Ct. R. 14.4.

Shaw vaguely contends that dismissal of her 42 U.S.C. § 1983 claim "was due to the alleged improper use of the Rooker-Feldman Doctrine." See Petition, p. 7. She further alleges that the use of the Rooker-Feldman Doctrine "conflicts with a relevant decision of the U.S. Supreme Court." Id. p. i.

Nonetheless, Shaw has not set forth any facts or contentions to support her conclusion that the Rooker-Feldman Doctrine does not apply in this case. She has similarly identified no case conflicting with the decisions of Judge Moon and the Court of Appeals in this case. She has made no argument amplifying the reasons relied upon as a basis for her

Petition. Therefore, she has not adequately presented the essential points for consideration, and her Petition should be denied.

C. Shaw's 42 U.S.C. § 1983 claim was properly dismissed.

Finally, regardless of whether the Rooker-Feldman Doctrine precluded the District Court from exerting jurisdiction over Shaw's 42 U.S.C. § 1983 claim, Judge Moon properly dismissed the claim. The Court of Appeals, after reviewing the record, found no reversible error in this decision. Pet. App. at A.

Shaw failed to state a claim for violation of her due process rights pursuant to § 1983. She failed to allege facts indicating that she was deprived of rights guaranteed by the Constitution or laws of the United States, and that such deprivation resulted from conduct of a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 2254 (1988). Furthermore, Dr. Anderson enjoyed quasi-judicial immunity for his actions relating to this case, as he was a licensed clinical psychologist, conducting evaluations of the children pursuant to court order. See e.g. Brown v. Newberger, 291 F.3d 89 (1st Cir. 2002); Hughes v. Long, 242 F.3d 121, 126 (3d Cir. 2001); Ostrzenski v. Seigel, 177 F.3d 245, 249 (4th Cir. 1999); Turney v. O'Toole, 898 F.2d 1470 (10th Cir. 1990). Therefore, Judge Moon's dismissal of Shaw's § 1983 claim was properly affirmed.

II. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S HOLDING THAT SHAW COULD NOT REPRESENT HER CHILD *PRO SE* FOR THE PURPOSES OF CLAIMS UNDER SECTION 504 OF THE REHABILITATION ACT AND TITLE II OF THE ADA.

In her Amended Complaint, Shaw attempted to set forth claims, on behalf of her minor child CJS, for alleged violations of Section 504 of the Rehabilitation Act and Title II of the ADA. These claims arose out of Shaw's allegations that employees of the City of Lynchburg failed to provide the assistance of a qualified speech therapist for CJS during an interview concerning allegations of sexual abuse by CJS' father. Opp. App. at A.

With regard to this second question presented, Shaw's Petition should be denied for two reasons. First, Judge Moon properly dismissed these claims because Shaw is prohibited from bringing these claims *pro se* on her minor child's behalf. Second, Shaw has set forth no reason or argument for granting her Petition with regard to the claims for which she attempted, *pro se*, to represent her child.

A. The Court of Appeals properly affirmed the District Court's holding that Shaw could not represent her child *pro se* in this case.

This Court has not yet addressed whether a parent may generally represent her minor children *pro se*. However, numerous circuits have addressed the issue, and determined that a non-lawyer parent cannot generally litigate on behalf of his or her children in federal court.

The United States Court of Appeals for the Fourth Circuit addressed this issue in 2005 and held, "[t]he right to litigate for *oneself* . . . does not create a coordinate right to litigate for *others*." Myers v. Loudoun County Pub. Sch., 418 F.3d 395, 400 (4th Cir. 2005). In Myers, the Court of Appeals adopted the rule that *pro se* parents are typically not permitted to litigate their children's claims, stating, "[w]e therefore join the vast majority of our sister circuits in holding that non-attorney parents generally may not litigate the claims of their minor children in federal court." Id. at 401.

Indeed, the restriction against a parent litigating on behalf of her child's rights without counsel is almost unanimous among the federal circuits. See Elustra v. Mineo, 595 F.3d 699 (7th Cir. 2010) (citing Navin v. Park Ridge Sch. Dist., 270 F.3d 1147, 1149 (7th Cir. 2001)); Berrios v. New York City Hous. Auth., 564 F.3d 130, 133-34 (2nd Cir. 2009) (citing Cheung

v. Youth Orchestra Found. Buffalo, Inc., 906 F.2d 59, 61 (2d Cir. 1990)); Shepherd v. Wellman, 313 F.3d 963, 970 (6th Cir. 2002); Devine v. Indian River County Sch. Bd., 121 F.3d 576, 581 (11th Cir. 1997); Johns v. County of San Diego, 114 F.3d 874, 877 (9th Cir. 1997); Oseai-Afriyie v. Med. Coll. Pennsylvania, 937 F.2d 876, 882 (3d Cir. 1991); Meeker v. Kercher, 782 F.2d 153, 154 (10th Cir. 1986).

The rationale for this rule is that a minor's personal cause of action is her own, and does not belong to her parent. See Shepherd, 313 F.3d at 970. It would risk the rights of the child to permit a layman to litigate for her. See Myers, 418 F.3d at 400. Furthermore, permitting laymen to practice law on behalf of others would be prejudicial to the opposing party, who then would have to guard against "poorly drafted, inarticulate, and vexatious claims." Id. (internal citations omitted).

Judge Moon noted this reasoning in his memorandum opinion. Pet. App. at B, section III.B. He further stated, "[b]ecause any alleged actions by Barca or Moore would be violations of CJS's (not Shaw's) rights . . . Shaw lacks standing to litigate those claims *pro se* on CJS's behalf." Id.

Therefore, the Court of Appeals appropriately affirmed Judge Moon's dismissal of Shaw's claims on behalf of her minor child. Her Petition should be denied.

B. Shaw has set forth no reason for granting her Petition with regard to her claims on behalf of her minor children.

Rule 14.2 requires that "[a]ll contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition." Sup. Ct. R. 14.2. Subparagraph 1(h), in turn, mandates that the Petitioner must provide "[a] direct and concise argument amplifying the reasons relied upon for reasons relied on for allowance of the writ." Sup. Ct. R. 14.1(h). Failure to so set forth "with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason" for denial of a petition. Sup. Ct. R. 14.4.

Shaw states in her Petition that "[t]he [District Court's] dismissal [of her claims] relied upon the making of a decision based on a federal question of which the U.S. Supreme Court has not ruled." See Petition, p. 7. She further states that the "Court of Appeals affirmed the decision of the District Court not to allow the non-lawyer parent, petitioner to litigate pro se in a federal court action on behalf of a child, an important federal question that has not been, but is requested to be, settled by the U.S. Supreme Court." Id. p. i.

Nonetheless, in her Petition, Shaw does argue that a non-lawyer parent should be generally permitted to represent her children *pro se*. She does not set forth

any facts or reasoning to support a conclusion that she should have been permitted to represent her minor children in this case. She cites no case, statutory, or constitutional law to support a contention that she should be permitted to represent her children *pro se* in a federal case. Therefore, she has not adequately set forth the essential points for consideration and her Petition should be denied.

III. SHAW'S CONTENTION REGARDING THE DUE PROCESS CLAUSE AND "ACTIONS" AND "INACTIONS" IS VAGUE AND CONFUSING AND IS AN ISSUE THAT HAS BEEN RAISED FOR THE FIRST TIME IN HER PETITION.

In her third question presented, Shaw states, "[t]he U.S. Supreme Court has not ruled on the Constitution proclaiming safeguards positive as well as negative in protection of rights and liberties of its citizens. A ruling regarding 'inactions' triggering the Due Process Clause in the same manner as 'actions' could assure equal protection of the law." See Petition, p. i. She elaborates, "[t]he Amended Complaint contains specifics of the actions and inactions by the respondents that are alleged as wholly arbitrary and irrational, providing a clear example of the oppression existing in our land, creating a need for federal interest." Id. at 8.

It is unclear what Shaw is contending by these statements. Furthermore, these prohibitively vague contentions do not set forth any alleged error by the

Courts below. She does not clearly set forth any points for consideration or any reasons that her Petition should be granted with regard to her third question presented. See Sup. Ct. R. 14.1(h) and 14.4.

Finally, this Court has held that it "ordinarily will not decide questions not raised or litigated in lower courts." City of Springfield v. Kibbe, 480 U.S. 257, 259, 107 S. Ct. 1114, 1115 (1987); see also Singleton v. Wulff, 428 U.S. 106, 120, 96 S. Ct. 2868, 2877 (1976)(holding that it is the general rule that "a federal appellate court does not consider an issue not passed upon below."). Because Shaw did not raise this argument in either the District Court or with the Court of Appeals, her Petition should be denied.

CONCLUSION

A. J. Anderson, Ph.D., by counsel, respectfully requests that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

A. J. ANDERSON, Ph.D.

By: _____.

Nora Beth Dorsey, Esq. (State Bar Number: 47663)
Jodi B. Simopoulos, Esq. (State Bar Number: 68789)
Counsel for A. J. Anderson, Ph.D.
Hancock, Daniel, Johnson & Nagle, PC
4701 Cox Road, Suite 400
Glen Allen, Virginia 23060
Telephone: (804) 967-9604
Fax: (804) 967-2411
Email: jsimopoulos@hdjn.com